

JAMES M. CHUDNOW

IBLA 84-103

Decided August 29, 1984

Appeal from a decision of the Montana State Office, Bureau of Land Management, finding a partial relinquishment of oil and gas lease M-51343 to be unacceptable and the lease to have terminated by operation of law for failure to pay the full annual rental timely.

Reversed.

1. Oil and Gas Leases: Applications: Generally -- Regulations: Interpretation

Regulations should be so clear that there is no basis for an oil and gas lessee's noncompliance with them, or they should not be interpreted to deprive him of his lease.

2. Oil and Gas Leases: Relinquishments -- Words and Phrases

The phrase "any legal subdivision" in 43 CFR 3108.1 permitting relinquishment of an oil and gas lease or any legal subdivision thereof is not limited in meaning to whole sections for lands shown on a protracted survey.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

The Montana State Office, Bureau of Land Management (BLM), issued noncompetitive oil and gas lease M-51343, effective September 1, 1982, to James M. Chudnow (Chudnow) for sacs. 1, 2, 12, 13, and 24, T. 5 S., R. 17 W., Principal meridian, encompassing 3,166 acres. On August 31, 1983, Chutney submitted annual rental payments for several leases including \$640 for lease M-51343. With respect to lease M-51343, his cover note stated that he was relinquishing all acreage in T. 5 S., R. 17 W., Principal meridian, except that he wished to keep the E 1/2 E 1/2 of sacs. 1, 12, 13, and 24, encompassing 640 acres.

By decision dated September 28, 1983, BLM held that the partial relinquishment was unacceptable and therefore the lease terminated for failure to pay the full rental on the lease anniversary date of September 1, 1983. BLM found that the relinquishment was unacceptable because the lands at issue are

within protracted surveys, the lease provides for relinquishment of the lease in its entirety or any legal subdivision thereof, and the smallest legal subdivision of a protracted section is an entire section. BLM also informed Chudnow that he had the right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(d) and (e) (1982).

Chudnow timely appealed. In his statement of reasons, he points out that BLM issues noncompetitive oil and gas leases for less than whole protracted sections, citing for example lease C-30857 in T. 5 N., R. 76 W., sixth principal meridian, 1/ and argues that it is inconsistent to say that he cannot relinquish less than a protracted section. He argues also that his relinquishment does not leave any small unleased tracts surrounded by leased lands.

BLM's decision states in part:

It has been ruled by IBLA that the smallest legal subdivision within a protracted section is the entire section. A relinquishment must, therefore, conform to the smallest legal subdivision. Lands within a protracted section cannot be subdivided but must be kept as a whole. "The purpose is to facilitate the leasing of lands in protracted surveys by entire sections and to eliminate small unleased tracts surrounded by leased areas." William B. Collister (71 I.D. 124).

The Collister decision, however, deals with an oil and gas lease offer for lands shown on a protracted survey and a long standing regulatory requirement that such offers include only entire sections of land. See 43 CFR 3101.1-4(d) (1982); 43 CFR 3123.8(c) (1964). The one exception to that rule was where only a portion of a protracted section was available for lease; an offer which described all available lands in the section by subdivisional parts was also acceptable. See 43 CFR 3101.1-4(d)(2) (1982). It appears in this case that BLM has extended the lease offer requirement of whole sections for lands shown on protracted surveys (and the supporting rationale as expressed in Collister), to encompass relinquishments.

Under current oil and gas leasing regulations, as revised in July 1983, the requirements governing offers have been rewritten. Offers to lease either officially surveyed land or land in an approved protracted survey must include not "less than 640 acres or 1 full section" except where the offer includes all available lands in a section and there are no available contiguous lands. 43 CFR 3110.1-3(a). In addition, under the revised regulations lands shown on protracted surveys are now to be described in the same manner as officially surveyed lands; that is, "by legal subdivision, section, township, range and meridian." 43 CFR 3111.2-1(c).

[1, 2] The current regulation governing relinquishment, 43 CFR 3108.1, states in part: "A lease or any legal subdivision thereof may be surrendered

1/ According to the plat submitted by appellant, lease C-30857 excludes certain patented lands within a section.

by the record title holder by filing a written relinquishment in the proper BLM office." We find no reason under the current regulations for construing the phrase "any legal subdivision" so narrowly as to mean only a whole section. See Robert P. Cancel, 74 I.D. 373 (1967). If that is what BLM intended, it should have so stated. Regulations should be so clear that there is no basis for an oil and gas lessee's noncompliance, or they should not be interpreted to deprive him of his lease. See Bill J. Maddox, 34 IBLA 278, 281 (1978).

Accordingly, BLM's decision finding appellant's relinquishment unacceptable must be reversed. Further, 43 CFR 3108.1 states that "[a] relinquishment shall take effect on the date it is filed," subject to certain conditions not at issue here. Appellant's relinquishment was filed on August 31, 1983, leaving 640 acres in lease M-51343 for which the \$640 rental payment submitted on the same date was adequate; thus, the lease did not terminate by operation of law for failure to pay rental by the September 1, 1983, anniversary date.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is reversed.

Wm. Philip Horton
Chief Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

